

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

RECEIVED

JUN 25 1996

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Parts 73 of)
the Commission's Rules to More)
Effectively Resolve Broadcast)
Blanketing Interference, Including)
Interference to Consumer Electronics and)
Other Communications Devices)

MM Docket No. 96-62

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF IRWIN, CAMPBELL AND TANNENWALD, P.C.
ON BEHALF OF BROADCAST LICENSEES

Irwin, Campbell and Tannenwald, P.C. (IC&T) hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") in the above-captioned proceeding, FCC 96-124, released April 26, 1996. IC&T is submitting these comments on behalf of broadcast licensees who own and operate AM and FM radio stations.¹ As broadcasters and owners of AM and FM stations, these licensees have an interest in this proceeding, which proposes substantial amendments to the broadcast blanketing interference rules.

Introduction

1. The Commission's present rules require a broadcast licensee to respond to complaints from the public if three conditions are met: (1) the complainant is located within the 115 dBu signal contour of the relevant FM broadcast station, (2) the complaint is made within one year after the broadcast station goes on the air, and (3) the complainant is operating a protected

¹ The commenting parties are Central Missouri Broadcasting, Inc., CMB II, Inc., NB II, Inc., Northern Colorado Radio, Inc., Northland Broadcasting, Inc., Reading Radio, Inc., Tri-State Broadcasting, Inc., and TSB II, Inc.

device. If a valid complaint is lodged, the licensee is financially responsible to correct the problem. After the one-year period passes, the broadcaster's responsibility is limited to providing technical assistance.

2. The Commission proposes to retain these three general conditions but would impose additional burdens on broadcast stations.² For example, the Commission proposes to extend the current one-year period of liability to cover individuals who move into the blanketing contour after the one-year period including transient residences such as hotels and college dormitories. The Commission also requests comment on whether to extend blanketing protection to wired and wireless telephones, high gain antennas and whether to impose time limits on response time to complaints.

3. While the Commission correctly identifies one of the problems - the encroachment of residents and businesses into formerly isolated transmitter sites - its proposed solution of increasing the obligations of licensees is misguided. The Commission's proposal ignores the corrective actions available to developers, building contractors, radio and telephone equipment manufacturers and PCS-type licensees. New transmitter facilities will continue to be covered for the one year liability period. However, for those homes and businesses which locate near existing transmitter sites, it is unreasonable and unfair to impose responsibility on broadcasters without considering the fact that the potential difficulties of building at sites with a high RF environment can be anticipated and alleviated by developers and builders. Imposing extended responsibility on broadcast licensees imposes upon broadcasters responsibility of not only their own actions,

² The Commission also proposes to clarify the interference rules with respect to AM stations and codify the rule with respect to TV stations. Commenters do not address these issues.

which they already accept in the form of the current rules, but also responsibility for the actions of builders, businesses, and consumers themselves. Placing additional responsibility on broadcasters also ignores the design corrections that are readily available to radio and telephone manufacturers and equipment suppliers.

Licensee Responsibility

4. Commenters are opposed to extending the one year period of liability. Extending the blanketing interference responsibility beyond the one year period will disproportionately burden stations. As the Commission stated in its NPRM, the rules were initially intended to benefit both licensees and the listening public. The Commission believed that broadcast station applicants could conduct cost-benefit analyses of their potential blanketing liability before construction. This would allow licensees to determine optimal transmitter sites. *See NPRM at 2.* This rational approach is undercut if the Commission extends liability beyond the one year period, extends it to new technologies that develop after the one-year period, or applies it to newcomers who first arrive after the one-year period expires. Such a rule would in effect create an unlimited liability on broadcasters as individuals move into an area and new technologies are developed and become commonplace. Therefore, Commenters urge the Commission to limit broadcasters financial liability and responsibility to an initial one-year period.

5. The Commission requests comment on extending the one year liability period for transient residences and temporary lodging such as hotels, university student dormitories, and rental properties. *See NPRM at 3.* Such an action would impose a continuous liability on licensees and would be impractical. For example, hotel guests move in and out of an area too quickly for licensees to assist them. Such a rule would also require licensees to take care of a

whole new crop of college students each year. New residents would move into the area continuously, certainly more than occurs during the current one year period, imposing an unreasonable and impractical burden on licensees.

6. Extending the liability period on licensees is also inequitable. Licensees have no control over how a building is designed, how the wiring, plumbing, and ductwork are installed; these are factors, among others, that can affect blanketing interference in a house or building within the blanketing contours of all stations. Construction methods are known and available which can at least minimize much potential blanketing interference. Licensees should not be penalized for actions of others over which they have no control.³ Furthermore, many of the perceived problems of blanketing interference could actually be dealt with by regulating radio receiver design. The Commission eliminated its receiver design regulations, resulting in cheap radios with poor selectivity characteristics and poorly designed electronic components. Due to this poor receiver design, portable receivers (as distinct from mobile car radios) should not be afforded blanketing interference protection.

7. There should be no requirement that broadcasters provide technical assistance after the initial one year period following construction of a station. Any effort to resolve complaints filed more than one year after completion of construction of a broadcast site by the licensee should be considered "voluntary" in an effort to improve community relations. The Commission recognized

³ As true with respect to the law of nuisance in general, an existing operation that is in compliance with appropriate laws and regulations should not be burdened with complaints of newcomers to that environment. This is especially true with regard to blanketing interference where there are known construction techniques and equipment designs that can eliminate, or at least significantly minimize, the problem.

in the NPRM that in most cases involving complaints not covered by the blanketing interference rules, licensees take voluntary steps to alleviate problems in order to promote goodwill within the station's community. Most stations are dependent upon the good will of their communities to be successful and this incentive should be relied upon during the post one-year period. Therefore, the imposition of a technical assistance but no financial liability standard after the first year should be deleted.

8. Commenters also oppose any effort to require specified response times or logging of blanketing complaints. These proposals will place unnecessary burdens on licensees and create a whole new scheme of detailed regulations during a time of regulatory moderation and downsizing. Such detailed regulations are unnecessary and should not be adopted.

9. Commenters support the Commission's proposal to include in the rule a table of covered and non-covered devices as a useful clarification. Table top, AC/DC powered, alarm clock and other similar low-priced radios should be added to the excluded devices. These radios represent some of the poorest designed receivers on the market which have virtually no selectivity within a 115 dBu contour. The result of the rules including such devices is that broadcast licensees may be required to upgrade the affected individual's low-price and poor-quality radios with higher price and higher quality devices since replacement with another poor-quality item will not solve the problem. Also, all Part 15 devices should be included on the list of devices which are not protected under the blanketing rules to make clear that such devices (garage door openers, etc.) are not the licensee's responsibility.

10. High gain antennas. The current rules specifically do not require broadcasters to protect high gain antennas utilized by any resident. The Commission proposes to delete reference

to high gain antennas from the blanketing rules. While the intent of the Commission is not clear from the NPRM, the Commission should not extend the blanketing interference rules to users of high gain antennas if, in fact, that is what is being proposed. Regardless of semantics, the rules should make clear that high gain antennas are not protected from blanketing interference.

11. A substantial percentage of interference complaints result from poorly designed “booster amplifiers” which overload and create all kinds of images. This “front end overload” effect causes the complainant to feel the nearby Fm station is splattering and “off frequency” when in fact the problem is poorly designed and poorly shielded “high gain” amplifiers. Commenters strongly support the continued exclusion of such high gain amplifiers from protection.

12. Permissive Station Modifications. Commenters also believe that minor modifications permitted under Section 73.1690 of the Commission’s Rules should not create a new one year period. These modifications are allowed by the Commission without prior approval and, except perhaps for the increase in the effective radiated power of eligible Class A FM stations, should not impose a new one year blanketing burden on licensees. These modifications are sufficiently minor so as to not require prior approval by the Commission. Therefore, the filing of a license application following such changes should not create a new liability period.

Telephone Interference

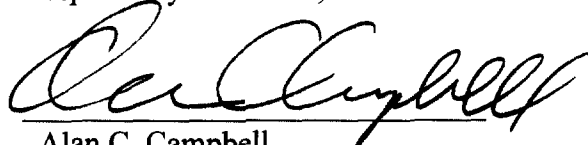
13. Currently wired and wireless telephones are not covered by the blanketing interference rules. However, the Commission requests comments on whether telephones and wireless communications equipment should be included as a protected device under the blanketing rules. Broadcasters should have no liability for interference to telephones. As noted by the Commission, *see* NPRM at 4, poor phone design is the major culprit of interference complaints.

As the Commission concluded in its study "Telephone Interference Survey"⁴, manufacturers can design telephones to be interference free. Licensees should not be compelled to correct difficulties which are the rightful responsibility of telephone manufacturers.

14. Likewise, blanketing interference protection should not be extended to cellular, private radio, SMR and new PCS system sites as proposed by the Commission. Tower sites for these new services are being installed within yards of broadcast towers at the election of the wireless providers. The wireless providers know the existing conditions when they choose to locate at those sites and are much better equipped to plan and consider potential difficulties arising from this proximity. As the newcomer, wireless providers have the ability and responsibility to design, locate and install systems that avoid potential blanketing interference; the burden should not be imposed on existing broadcast stations.

WHEREFORE, we respectfully request that Commission consider the foregoing Comments and revise the blanketing interference rules accordingly.

Respectfully submitted,



Alan C. Campbell



Michelle A. McClure

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, D.C. 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

June 25, 1996

⁴ See FCC NEWS release No. 42874, May 4, 1994 announcing the "Telephone Interference Survey," May 2, 1994, prepared by Field Operations Bureau, cited in NPRM at 4.